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OCTOBER TERM, 1947

LAND O'LAKES DAIRY COMPANY,

Petitioner,

vs.

VILLAGE OF SEBEKA, et al.,

Respondents.

BRIEF IN OPPOSITION

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Supreme Court of the United States

No. 777

OCTOBER TERM, 1947

LAND O'LAKES DAIRY COMPANY,
Petitioner,

vs.

VILLAGE OF SEBEKA, et al.,
Respondents.

BRIEF IN OPPOSITION

QUESTION PRESENTED

May the courts of the State of Minnesota refuse to allow relief under a state declaratory judgments act on the ground that the petitioner is not entitled to relief under the terms of that act by reason of its own conduct?

STATUTES INVOLVED

Minnesota Statutes Annotated, c. 555. M. S. A., sec. 555.01, provides:

> "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal regulations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

THE FACTS

The facts as contended to be by the petitioner are substantially these. The petitioner constructed and equipped a plant at Sebeka, Minnesota. By virtue of a contract with the United States of America and by virtue of a certain warranty deed and bill of sale from it to the United States made pursuant to the contract, the United States is and has been since May 1, 1945, the sole and exclusive owner of the real and personal property here involved. The petitioner during all of said time has been in possession of all the real and personal property under a lease from the United States. (State Record ff. 5 to 20, inclusive.) On May 1, 1945, and again on May 1, 1946, the real and personal property was listed and assessed for tax purposes. Pursuant to the provisions of M. S. A., ch. 278, petitioner paid half of the real estate tax and simultaneously filed its petition as required by ch. 278. Pursuant to the mandate of ch. 278, these proceedings were dismissed for failure of petitioner to comply with ch. 278. The 1945 personal property taxes were paid in full. None of the real estate or personal property taxes assessed for the year 1946 have been paid. After dismissal of the proceedings under ch. 278, the petitioner brought this action pursuant to ch. 555 praying for judgment declaring the real and personal property exempt from taxation as of May 1, 1945, and all taxes thereon null and void and of no legal effect and for additional declarations. R. pp. 73 and 74. Respondents' demurrers to the complaint were sustained. R. p. 73. Petitioner appealed to the state supreme court from the order sustaining the demurrers.

SUMMARY OF THE STATE COURT'S OPINION

In Part I of its opinion the Minnesota Supreme Court considered whether a taxpayer could question the validity of a tax in an action for declaratory judgment under M. S. A., c. 555, in view of other remedies provided by M. S. A., secs. 277.02 and 278.01. The court held that sec. 278.01 provided an exclusive remedy for contesting real estate taxes and that, therefore, petitioner could not prevail as to the real estate taxes assessed. The court also held that M. S. A., sec. 277.02, providing a remedy for contesting personal property assessments, was so defective as a remedy that "* * * with respect to personal property taxes relief under the declaratory judgments act is available * * *." R. p. 80.

In Part II of the opinion the court turned its attention to the question as to whether, under the principles enunciated in Part I of its decision, petitioner can in an action for declaratory judgment raise the question of implied delegated immunity.

The court held "that while the declaratory judgments act is available for the purpose of testing the validity of a questioned tax levy and assessment as to the personal property" the petitioner is not entitled to relief under the terms of that act because of its own conduct in voluntarily assuming to pay the taxes. R. pp. 83, 84.

After the issuance of the court's first opinion on March 12, 1948, petitioner petitioned the Minnesota Supreme Court for the purpose of clarification of the last paragraph of the court's opinion. R. p. 102. The petitioner asserted that it was not clear whether the decision rested on a determination of the alleged tax immunity or whether it rested on the procedural matter of interpretation of the declaratory judgments statute. Petitioner complained of the possibility that the United States Supreme Court might refuse to grant certiorari on the

grounds that there was no federal question presented and that the District Court of Minnesota, before whom there is now pending an action to collect the personal property tax which is the subject of this action, might consider the Minnesota decision as res judicata and, therefore, refuse to determine the question of tax immunity on its merits. R. p. 104. For these reasons, petitioner requested that the court clarify its opinion. Thereafter the Minnesota Supreme Court modified the last paragraph of its first opinion in the manner indicated below. To set forth the language of the opinion before and after amendment, we have combined the language of the two opinions. The matter stricken is that which appeared in the first opinion and was stricken therefrom. The matter underlined is new matter added by the second decision.

> "It is our judgment therefore, that while the declaratory judgments act is available for the purpose of testing the validity of a questioned tax levy and assessment as to the personal property, the dairy company in this action is not entitled to relief under its terms. ~~Having voluntarily assumed to pay the tax, it is faced with this dilemma: (a) if it is not obligated to pay the tax, it has no such interest in the question as will entitle it to a declaratory judgment in its favor; (b) if it is obligated to pay the tax, it is so because of a duty voluntarily assumed, and~~ *Since the dairy company has voluntarily assumed to pay the tax* it is not entitled to a judgment declaring its own promise to have been a meaningless thing. For these reasons the order of the trial court sustaining the demurrer to the complaint is affirmed."

ARGUMENT

Before entering upon a discussion upon the merits of the issue before the court, we deem it appropriate to comment upon the efforts of the petitioner to enlarge the scope of the question. In its decision the Supreme Court of Minnesota made two final determinations and only two. It decided (1) "that, so far as the determination of tax matters referred to in § 278.01 on real estate is concerned, c. 278 provides the necessary requisites and that L. 1933, c. 286 (M. S. A., c. 555), known as the uniform declaratory judgments act, is not available to the dairy company as an alternate remedy" (R. p. 80), and (2) that under the facts alleged in the complaint, the dairy company is not entitled to relief under the terms of the uniform declaratory judgment because of its own conduct. R. pp. 83, 84.

Despite the fact that petitioner argues about the effect of the decision upon real estate taxes, the first determination of the state court as stated above is not an issue in the matter now pending before this court. On page 4 of its petition, petitioner states:

> "Being a separate issue upon which a final judgment has been rendered on the merits, review is sought by this Court of that judgment as it relates to *the tax imposed on the equipment in the plant.*" (Italics supplied.)

From this statement it is clear that no question is now before this court as to the real estate tax and that the only issue before the court involves the state court decision affecting the personal property tax.

I.

No Federal Question Is Involved.

Petitioner in its complaint prayed for a judgment "declaring and adjudging the land, plant, machinery, and equipment * * * to be exempt from taxation as of May 1, 1945; that all assessments, levies and taxes described in the complaint be declared wholly null and void and of no legal effect; that the property retain its status of exemption from taxation until such time as the United States should be divested of its interest in the property * * *." R. p. 74.

The court does not hold that the property in question is taxable. The court holds that while, generally, the validity of personal property taxes may be determined in an action brought under a state statute making available actions for declaratory judgment, in this case upon the specific facts here present including the voluntary assumption by the petitioner of the payment of the tax, the dairy company is not entitled to a judgment determining the validity of the tax.

In so holding the state court is merely applying the well-settled principles of the law of declaratory judgment. The granting of declaratory judgment is a matter within the discretion of the court. M. S. A., sec. 555.01.

Borchard, Discretion to Refuse Jurisdiction of Actions for Declaratory Judgments, 26 *Minn. Law Review* 677.

Courts have refused declaratory judgment in cases in which the plaintiff by his own conduct has weakened his claim for relief.

Borchard, Declaratory Judgments, 2nd Ed., Part II, Chapter V, p. 305, note 62.

Cf. *Enterprise Irrigation District, et al., v. Farmers Mutual Canal Co.*, 243 U. S. 157.

Cf. *Leonard v. Vicksburg, etc., R. R. Co.*, 198 U. S. 416.

The Minnesota statute requires "all persons who have or claim any interest which would be affected by the declaration" to be made parties. M. S. A., sec. 555.11. Failure to include such persons as parties of itself warrants a refusal of relief by declaratory judgment.

Borchard, Declaratory Judgments, 2nd Ed., Part II, Chapter V, p. 299.

If, as contended by petitioner, the state seeks here to tax property belonging to the federal government, that the federal government is an interested party would seem obvious. In *James v. Dravo Contracting Co.*, 302 U. S. 134, the federal government denied the tax immunity alleged in its behalf. In *United States v. Allegheny County*, 322 U. S. 174, the federal government contended for immunity. It would, therefore, seem only reasonable that a state court would deny the use of declaratory judgment in absence of federal participation in the action.

Petitioner in its petition to the state court for rehearing and clarification of the first opinion put to the court the issue of whether the decision rested on a procedural matter of interpretation of the declaratory judgment statute. R. p. 104. The second opinion clearly resolves this issue in the affirmative and confirms petitioner's fears as to the meaning of the original opinion.

The petition should be denied on the ground that no federal question is presented.

Murdock v. Memphis, 20 Wall. 590;
Insurance Co. v. Treasurer, 11 Wall. 204;
Eustis v. Bolles, 150 U. S. 361;
Lynch v. New York, 293 U. S. 52;
Honeyman v. Hanan, 300 U. S. 14.

As the state court has clarified its first opinion for the purpose of resolving doubts as to the presence or absence of a federal question, request for further clarification would seem unnecessary.

Cf. *State of Minnesota v. National Tea Co.*, 309 U. S. 551;

Cf. *Herb v. Pitcairn*, 324 U. S. 117, 125.

II.

Second Action Now Pending Raises Federal Question Alleged to Have Been Decided in the Instant Case.

The decision of the district court in the instant case was rendered on May 16, 1947. On April 5, 1948, an action was commenced against petitioner to collect the taxes involved in the instant case. M. S. A., sec. 277.02. Petitioner has interposed an answer in the second action. R. p. 104.

Although the instant case finally disposes of the issue of whether relief may be obtained by way of declaratory judgment, it is not a final determination of any federal question.

The reasoning applied in the condemnation cases should apply in the instant case.

Grays Harbor Co. v. Coats-Fordney Co., 243 U. S. 251.

III.

No Final Judgment on Validity of Tax Presented for Review.

The judgment rendered by the state court is not a declaratory judgment sustaining a tax or determining the question sought to be reviewed here.

The state court refused to enter a judgment declaring whether Clause 12 of the lease endows "the state with a power * * * to collect the tax upon the full interests of the United States in the property." Petition for writ of certiorari, page 3.

Bacon & Sons v. Martin, 302 U. S. 642 (268 Ky. 612, 105 S. W. 569).

The most petitioner can obtain is a judgment of dismissal. Such a judgment of dismissal under the facts of this case is not a final determination on the merits nor does it operate as a bar or estoppel.

Swanson v. Great Northern Ry., 73 Minn. 103, 75 N. W. 1033;

State ex rel. Globe I. Co. v. District Court, 136 Minn. 147, 161 N. W. 391.

IV.

No Federal Right to Remedy of Declaratory Judgment.

The right of petitioner to determine the validity of the personal property tax by an action in declaratory judgment is a purely state right conferred by a state statute. The determination that petitioner is not entitled to relief under the terms of that statute by reason of its own conduct in voluntarily assuming to pay the tax and seeking to evade that responsibility by use of state procedure, namely, an action for a declaratory judgment is purely a state question. There is no federal law which guarantees to petitioner the remedy of an action in declaratory judgment.

Dohany v. Rogers, et al., 281 U. S. 362, 369;

Crane v. Hahlo, et al., 258 U. S. 142, 147.

V.

Assignments of Error Are Inadequate.

Petitioner's assignments of error are so broad and indefinite as not to comply with rule 27 and rule 38. The decision of the state court does not sustain the tax in question. The decision does hold that the State of Minnesota is a third party beneficiary of a contract between petitioner and the federal government.

CONCLUSION

We respectfully submit that the petition for writ of certiorari should be denied.

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